HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case

A.O. No. 20 of 2001

Date of Decision : 18th December, 2006

A.F.R. (Approved for reporting)

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~~Not approved for reporting.~~

Date : 18.12.2006

Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Appeal From Order No. 20 of 2001

Smt. Mohendra Kaur Chaudhary
W/o Late Sri T.S. Chaudhary
R/o D-20, Kamla Nagar ... Appellant

Versus

1. Bhole S/o Ajmer Singh
   R/o Village Runkata,
   Police Station Sikandra, Agra
2. The New India Insurance Co.
   Branch Civil Lines, M.G. Road, Agra
   Through its Branch Manager
3. Km. Soniya Malik
   D/o Late Kishan Pal Singh Malik
4. Master Nitin
   S/o Late Kishan Pal Singh Malik
5. Km. Neelam
   D/o Late Kishan Pal Singh Malik
   Respondent Nos. 3 to 5
   R/o 494 Khurbura Mohalla, Dehradun ... Respondents

Dr. D.C.S. Rawat, learned counsel for the appellant.
Mr. Amit Bisht, Advocate on behalf of Mr. Yogesh Pacholia, learned counsel for the respondent No. 1
Mr. V.K. Kohli, Senior Counsel with Mr. I.P. Kohli, learned counsel for the respondent No. 2.
Mr. Niranjan Bhatt, learned counsel for the respondent Nos. 3 to 5.

JUDGMENT

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This appeal, preferred u/s 173 of the Motor Vehicles Act, 1988, is directed against the award dated 05.12.2000 passed by the Motor Accident Claims Tribunal/IIIrd Additional District Judge, Dehradun, in M.A.C. Case No. 39 of 1998 whereby the claim of the claimants was allowed for an amount of compensation to the tune of Rs.5,50,000/- and the appellant/owner of the tanker-Smt. Mahendra Kaur was directed to pay the same.

2. The claimants, children of deceased-Krishna Pal had filed a claim petition for compensation of Rs. 20,00,000/- before the Tribunal alleging therein that on 01.10.1997 at 7:00 p.m., while the deceased-Krishna Pal was coming back from Circle Office alongwith Head Constable, Satyapal Singh by Hero Honda Motor Cycle to the Police Station Nangal, District Saharanpur, a offending tanker No. UP 80-D9018 being driven rashly and negligently by its driver hit the Motor Cycle of the deceased. Thereafter, the driver of the offending tanker fled away from the place of occurrence. The Head Constable, Satyapal Singh took the injured to the Government Hospital, Saharanpur where the doctors referred him for Chandigarh. But Kishan Pal died on account of the injuries sustained in the said accident. It is further alleged in the claim petition that the deceased was getting a salary of 4,122/- p.m. Besides this, he was also getting Rs. 3,000/- per p.m. from the agricultural land.

3. The opposite parties contested the claim petition and filed their separate written statements. The opposite party no.1-Bhole, driver of the offending Tanker pleaded that due to non-joinder of the owner, driver and insurer of the Hero Honda Motor Cycle, the claim petition is not maintainable. It is also pleaded that he was not driving the vehicle at the time of the accident. The Opposite party No.2-Smt. Mahendra Kaur, owner of the offending Tanker pleaded that the accident in question was caused on account of the rash and negligent driving of the Motor Cyclist. It was also pleaded that a Tata Sumo had tried to overtake the Tanker and the Motor Cycle was coming rashly from the opposite side and they collided with each other. The driver of the Tata

Sumo alongwith his vehicle fled away from the spot. When the Motor Cyclist tried to escape from the right side of the Tanker, they fell down and sustained the injuries. The driver of the offending Tanker was not rash and negligent at the time of the accident. The insurer in its written statement pleaded that due to non-joinder of the owner and the insurance company of the Hero Honda Motor Cycle, the claim petition is not maintainable. It was also pleaded that the driver of the offending tanker was not having a valid driving license at the time of the accident and the offending Tanker was plied against the terms and conditions of the policy.

4. On the basis of the pleadings of the parties, the learned Tribunal framed the necessary issues and held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. The Tribunal further assessed the income of the deceased at Rs. 4,225/- p.m. or Rs. 51,060/- per annum. The Tribunal has further assessed the income of the deceased out of farming at Rs. 3,000/- per annum. As such, the Tribunal assessed the total income of the deceased at Rs. 54,000/- per annum. By deducting 1/3 of the said amount as personal expenses of the deceased; the claimants' dependency was assessed at Rs. 36,000/-. By multiplying the annual dependency with the multiplier of '15', the compensation was worked out to Rs. 5,40,000/-. The Tribunal awarded Rs. 2,000/- towards funeral expenses, Rs. 5,000/- for loss of love and affection and Rs. 2,500/- for loss of estate. Thus a total of Rs. 5,50,000/- was awarded as compensation to the claimants for the death of Kishan Pal in the motor accident. The Tribunal further directed the owner of the offending vehicle-Smt. Mahendra Kaur/appellant to pay

the compensation of Rs. 5,50,000/- alongwith interest @ 12% per annum.

5. Feeling aggrieved by the award, the owner of the Tanker-Mahendra Kaur/appellant has filed this appeal.

6. Heard Mr. D.C.S. Rawat, learned counsel for the appellant; Mr. Amit Bisht, Advocate on behalf of Mr. Yogesh Pacholia, learned counsel for the respondent No. 1; Mr. V.K. Kohli, Senior Counsel with Mr.I.P. Kohli, learned counsel for the respondent No. 2 and Mr. Niranjan Bhatt, learned counsel for the respondent Nos. 3 to 5.

7. Learned counsel for the appellant submitted that the claimants could not establish the income of the deceased as pleaded by them and the compensation awarded by the Tribunal was excessive and exorbitant. It was further contended that the appellant was the registered owner of the offending Oil Tanker and the respondent No.1/Sri Bhole was the driver of the offending Tanker in question. The appellant further contended that he could not file the driving license of the respondent No.1/Bhole as the appellant was not in possession of the driving license of the respondent No.-1/Bhole at the time when the compensation proceedings were in progress before the Tribunal. It was further contended that after the accident, the respondent No.1/Bhole ran away from the spot and he did not return to his service with the appellant. The appellant could only obtain the duplicate of driving license from the Transport Office, Agra during the pendency of the appeal which has been filed before this court. It was further contended that the driver/Bhole had a valid driving license at the time of the accident and the

vehicle was insured with the New India Assurance Co. Ltd./respondent No.2, as such, the Insurance Company is liable to pay the compensation to the claimants. Mr. V.K. Kohli, Sr. Advocate appearing for the Insurance Co./respondent No.2 refuted the contention and contended that the insurer had verified the said driving license and it had been reported that the driver was having a driving licenses at that time. He further contended that it has to be ascertained by the evidence as to whether the said driving license was valid driving license for driving the Tanker in which the inflammable article was being transported. The learned counsel also contended that the compensation awarded by the Tribunal is not just and proper in the facts and circumstances of the case. He further contended that the deceased was serving in the police department and he could not have looked after the agriculture in his house, as such, his income of Rs. 3,000/- per annum could not be assessed as his annual income in addition to his salary. The learned counsel relying upon the dictum of the Hon'ble Apex Court in **Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya reported in J.T. 2005 (4) SC 531** further contended that the Tribunal had erred in selecting the higher multiplier of '15'. Learned counsel for the claimants refuted the contention and supported the award passed by the Tribunal.

8. The Tribunal had held that the owner of the vehicle/appellant could not file the driving license before the Tribunal. Consequently it was held that the driver of the offending tanker was not having a valid and effective driving license at the time of the accident. Now, the appellant has filed the driving license of the respondent No-1/driver of the

offending vehicle and the said driving license has been duly verified by the insurer. The document reveals that the driver of the offending tanker was having a driving license at the time of accident. But it is yet to be determined by taking evidence that at the time of the accident whether the offending tanker was carrying the inflammable article. If so, whether the driver had effective driving license for the same. But without giving opportunity to both the parties, it can not be held that the driver of the offending vehicle was having a valid driving license at the time of the accident. So far as the authenticity of the said document is concerned, it requires the evidence of both the parties. The claimants had adduced the oral evidence in support of their case by examining Rajkumari-PW1 and Satyapal Singh-PW2. The claimants had also filed pay slip and certain documents in support of their case. The learned counsel for the appellant as well as the Insurance Company are also disputing the quantum of compensation awarded by the Tribunal. In the facts and circumstances of the case, it would be just and proper and in the interest of justice to give the liberty to the parties to adduce the evidence also on the point of quantum of compensation as we are remanding the case to determine whether the driver of the offending Tanker had an effective driving license or not at the time of the accident and also to determine who is liable to pay the compensation.

9. In view of the above, the impugned award dated 05.12.2000 passed by the Motor Accident Claim Tribunal/IIIrd Additional District Judge, Dehradun, in M.A.C. Case No. 39 of 1998 is liable to be set aside and the matter is liable to be remanded back to the learned Tribunal with

directions to dispose of claim petition in light of the observations made above.

10. Accordingly, the impugned award dated 05.12.2000 passed by the Motor Accident Claim Tribunal/IIIrd Additional District Judge, Dehradun, in M.A.C. Case No. 39 of 1998 is hereby set aside and the matter is remanded back to the learned Tribunal. It is, however, made clear that the amount already withdrawn by the claimants, if any, shall be adjusted by the Tribunal at time of final disposal of the claim petition. The Tribunal is also directed to dispose of the matter expeditiously, preferably within a period of three months from the date of the receipt of copy of this order.

11. The amount of Rs. 25,000/- deposited by the appellant as mandatory deposit be transmitted to the Claims Tribunal immediately.

12. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 18th December, 2006
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